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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91197518
Party	Defendant 3P Learning Pty Limited
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Date	08/26/2011
Attachments	Answer Notice of Opp.pdf (5 pages)(803926 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matters of Application No. 77/875,559 for MATHLETICS
Application No. 77/875,579 for MATHLETICS

Athletics Investment Group LLC dba The
Oakland Athletics Baseball Company,

Opposer,

v.

3P Learning Pty Limited,

Applicant.

) Opposition No. 91197518

) RESPONSE TO NOTICE OF OPPOSITION

VIA ELECTRONIC SYSTEM FOR
TRADEMARK TRIALS AND APPEAL (ESTAS)

RESPONSE TO NOTICE OF OPPOSITION

Applicant, 3P Learning Pty Limited, an Australian Proprietary Limited Company, having its principal place of business at Level 18, 124 Walker Street, North Sydney, Australia NSW2060, herein ("Applicant"), hereby answers and responds to the allegations set forth in the Notice of Opposition as follows:

Applicant denies the allegations in the first introductory paragraph of the Notice of Opposition; denies that Opposer will be damaged by registration of Applicant's marks in the above pending applications; denies that Applicant's marks are likely to cause confusion, or to cause mistake or to deceive with respect to Opposer's registrations or use of "MATHLETICS"; and denies that registration of Applicant's aforesaid pending applications will dilute the distinctiveness of Opposer's marks.

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of each of the allegations contained in Paragraph No. 1 of the Notice of Opposition, and on that basis denies the same.

2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of each of the allegations contained in Paragraph No. 2 of the Notice of Opposition, and on that basis denies the same.

3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of each of the allegations contained in Paragraph No. 3 of the Notice of Opposition, and on that basis denies the same.

4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of each of the allegations contained in Paragraph No. 4 of the Notice of Opposition, and on that basis denies the same.

5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of each of the allegations contained in Paragraph No. 5 of the Notice of Opposition, and on that basis denies the same.

6. Applicant admits that it filed two U.S. applications for registration of the MATHLETICS word mark in application Serial Nos. 77/875,559 and 77/875,579 and that the details of the applications are recited therein, and Applicant denies the remaining allegations of Paragraph 6 of the Notice of Opposition.

7. Applicant denies the allegations contained in Paragraph No. 7 of the Notice of Opposition.

8. Applicant denies the allegations of Paragraph No. 8 of the Notice of Opposition.

9. Applicant denies the allegations contained in Paragraph No. 9 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

10. Applicant is informed and believes, and thereon alleges that the facts set forth in the Notice of Opposition are insufficient to show damage necessary to oppose the subject matter applications, and that the Notice of Opposition fails to state a claim upon which relief can be granted.

11. There is no likelihood of confusion between Opposer's ALTHETICS mark and registrations and the Applicant's MATHLETICS mark and applications, considering the marks themselves, the goods and services in connection with which they are used, the marketing channels of trade, and the plethora of third party registrations for the term ATHLETICS.

12. There is no likelihood of confusion, mistake or deception between the use and registration of the marks shown in Applicant's pending MATHLETICS applications Serial Nos. 77/875,559 and 77/875,579 for the services identified therein, and the Opposer's alleged use of MATHLETICS for the goods and services alleged. The marks of the respective parties are not confusingly similar, particularly when considering the distinctions between the alleged goods and services and the marketing channels of trade. Applicant alleges that no likelihood of confusion is created between the marks of the respective parties because the marks themselves are not confusingly similar; that Opposer's use of MATHLETICS is always affiliated with a distinctive logo signifying its relationship to professional baseball and the Oakland Athletics team; the goods or services of the parties are non-competitive and unrelated, and the goods and services of Opposer are offered in channels of trade remote from any usage by the Applicant.

13. Opposer does not have the exclusive right to use and/or register MATHLETICS, alone or in combination with other words or stylization, and no use or registration of ATHLETICS extends to use of MATHLETICS which is an independent mark.

14. Opposer's claims are barred by the doctrines of acquiescence, waiver, estoppel, unclean hands, and laches.

15. Opposer's failure to enforce its ATHLETICS mark and registrations has resulted in numerous third party registrations for related goods and services.

16. Opposer does not use its MATHLETICS or MATHLETICS and Design marks for related services.

17. Opposer has abandoned rights in the MATHLETICS or MATHLETICS and Design marks through non-use of the mark with the express or implied intent not to continue to use or by acts that caused the mark to lose its significance as an indication of origin.

WHEREFORE, Applicant prays that this Opposition be sustained in favor of Applicant; that Application Serial Nos. 77/875,559 77/875,579 be accepted for registration, and that registrations be issued thereon to Applicant.

Respectfully Submitted,

Dated: August 24, 2011

By:



Barry F. Soalt
Attorneys for Applicant,
3P LEARNING PTY LIMITED

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Attorney Docket: 116344-4/5

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing RESPONSE TO NOTICE OF OPPOSITION is being mailed on August 26, 2011, by First Class Mail to Opposer as follows:

Mary L. Kevlin, Esq.
Richard S. Mandel, Esq.
Jill K. Tomlinson, Esq.
Robert A. Reither, Esq.
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Dated: 8/26/11

By: Tamara S. Rodriguez
Tamara S. Rodriguez